

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY JE DC

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LECTROLARM CUSTOM SYSTEMS, INC., )

Plaintiff, )

v. )

VICON INDUSTRIES, INC., et al., )

Defendants. )

No. 03-2330 Ma/A

THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W/D OF TN, MEMPHIS

ORDER DENYING PLAINTIFF'S MOTION FOR MODIFICATION OF MARKMAN  
ORDER

On September 2, 2005, the court filed a "Memorandum Opinion and Order on Markman Motion and Order Denying Defendants' Motion for Summary Judgment of Invalidity of Claims 6 and 7" ("Markman Order"). Before the court is Plaintiff Lectrolarm Custom Systems, Inc.'s ("Lectrolarm") motion for modification of that order filed on September 21, 2005. Defendants GE Interlogix, Inc. ("GE") and Bosch Security Systems, Inc. ("Bosch") filed a response on October 24, 2005. Lectrolarm filed a reply on November 2, 2005, and GE and Bosch filed a surreply on November 16, 2005. Defendants Vicon Industries, Inc. ("Vicon") and Sensormatic Electronics Corp. ("Sensormatic") have declined to take a position on the motion. (Pl.'s Mot. Modification 1.) For the following reasons, Plaintiff's motion is DENIED.

Rule 59(e) affords a plaintiff relief from a judgment under limited circumstances:

First, the movant may demonstrate that the motion is necessary to correct manifest errors of law or fact upon which the judgment is based. Second, the motion may be granted so that the moving party may present newly discovered or previously unavailable evidence. Third, the motion will be granted if necessary to prevent manifest injustice .... Fourth, a Rule 59(e) motion may be justified by an intervening change in controlling law.

The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments, or present evidence that could have been raised prior to the entry of judgment. Also, amendment of the judgment will be denied if it would serve no useful purpose.

11 Charles Alan Wright et al., Federal Practice and Procedure § 2810.1 (2d ed. 1995) (footnotes omitted); see GenCorp, Inc. v. Am. Int'l Underwriters, 178 F.3d 804, 834 (6th Cir. 1999) (noting that Rule 59(e) motions may be granted if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice). The court should use its "informed discretion" in deciding whether to grant or deny a Rule 59(e) motion. See Huff v. Metro. Life Ins. Co., 675 F.2d 119, 122 (6th Cir. 1982).

In its motion, Lectrolarm asserts that a modification of the Markman Order is necessary to correct manifest errors of law. Specifically, it argues that the court's interpretation of Asyst Technologies, Inc. v. Empak, Inc., 268 F.3d 1364 (Fed. Cir. 2001) and the court's application of that decision to the "controlling

means" limitation of claim 2 of U.S. Patent No. 4, 974, 088 ("088 patent") is erroneous. Lectrolarm's argument on the proper interpretation of Asyst merely repeats the arguments made by Vicon and Sensormatic when the issue of claim construction was originally briefed by the parties. Although Lectrolarm did not itself make the argument previously, the argument was fully considered, but ultimately rejected by the court. The argument is no more persuasive now than it was initially and does not satisfy the requirements for a Rule 59(e) motion. Therefore, Plaintiff's motion for modification of the Markman Order is DENIED.

So ordered this 30<sup>th</sup> day of November 2005.



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SAMUEL H. MAYS, JR.

UNITED STATES DISTRICT JUDGE



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Honorable Samuel Mays  
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